

APPEAL

**U.S. District Court
TXS - Southern District of Texas (Laredo)**

CIVIL DOCKET FOR CASE #: 03-CV-113

Barrientos, et al v. State of Texas, et al

Filed: 08/11/03

Assigned to: Judge George P. Kazen

Jury demand: Plaintiff

Judge Lee H Rosenthal

Judge Patrick E. Higginbotham

Demand: \$0,000

Nature of Suit: 441

Lead Docket: None

Jurisdiction: Federal Question

Dkt# in other court: None

Cause: 42:1973 Voting Rights Act

GONZALO BARRIENTOS
plaintiff

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RODNEY ELLIS
plaintiff

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Max Renea Hicks
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J Gerald Hebert
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Paul M Smith
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MARIO GALLEGOS, JR
plaintiff

C M Zaffirini, Sr
(See above)
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Max Renea Hicks
(See above)
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David R Richards
(See above)
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J Gerald Hebert
(See above)
[COR LD NTC]

Paul M Smith
(See above)
[COR LD NTC]

JUAN "CHUY" HINOJOSA
plaintiff

C M Zaffirini, Sr
(See above)
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Max Renea Hicks
(See above)
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David R Richards

(See above)
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J Gerald Hebert
(See above)
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Paul M Smith
(See above)
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EDDIE LUCIO, JR
plaintiff

C M Zaffirini, Sr
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Max Renea Hicks
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David R Richards
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J Gerald Hebert
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Paul M Smith
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FRANK L MADLA
plaintiff

C M Zaffirini, Sr
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Max Renea Hicks
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David R Richards
(See above)
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Paul M Smith
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ELIOT SHAPLEIGH
plaintiff

C M Zaffirini, Sr
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Max Renea Hicks
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LETICIA VAN DE PUTTE
plaintiff

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Max Renea Hicks
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David R Richards
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Paul M Smith
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ROYCE WEST
plaintiff

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Max Renea Hicks
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David R Richards

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Paul M Smith
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JOHN WHITMIRE
plaintiff

C M Zaffirini, Sr
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Max Renea Hicks
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David R Richards
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Paul M Smith
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JUDITH ZAFFIRINI
plaintiff

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Max Renea Hicks
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David R Richards
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v.

STATE OF TEXAS
defendant

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RICK PERRY, In his Official
Capacity As Governor of The
State of Texas
defendant

Edward Donald Burbach
(See above)
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Andy Taylor
(See above)
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David C Mattax
(See above)
[COR LD NTC]

Barry Ross McBee
(See above)
[COR LD NTC]

Cassandra Burke Robertson
(See above)
[COR LD NTC]

Rafael Edward Cruz
(See above)
[COR LD NTC]

DAVID DEWHURST, In his
Official Capacity As
Lieutenant Governor and
Presiding Officer Of the Texas
Senate
defendant

Edward Donald Burbach
(See above)
[COR LD NTC]

Andy Taylor
(See above)
[COR LD NTC]















David C Mattax
(See above)
[COR LD NTC]



Barry Ross McBee
(See above)
[COR LD NTC]









Cassandra Burke Robertson






(See above)
[COR LD NTC]

Rafael Edward Cruz
(See above)
[COR LD NTC]

8/11/03	1		COMPLAINT by Gonzalo Barrientos, Rodney Ellis, Mario Gallegos Jr, Juan "Chuy" Hinojosa, Eddie Lucio Jr, Frank L Madla, Eliot Shapleigh, Leticia Van De Putte, Royce West, John Whitmire, Judith Zaffirini filed; FILING FEE \$ 150.00 RECEIPT # 519815 (mm)
8/11/03	2		MOTION for Attorney J Gerald Hebert to appear pro hac vice by Gonzalo Barrientos, et al., Motion Docket Date 8/31/03 [2-1] motion , filed. (mm)
8/11/03	3		Order setting Initial Pretrial and Scheduling Conference to be set before Magistrate Judge Adriana Arce-Flores, filed. Parties notified. (mm)
8/11/03	--		CASE REFERRED to Magistrate Judge Adriana Arce-Flores (mm)
8/11/03	4		ORDER OF RECUSAL, entered; Parties notified. (signed by Judge Keith P. Ellison) Case reassigned to Chief Judge George P. Kazen (mm)
8/13/03	5		REQUEST by pltf Gonzalo Barrientos, et al., to convene a Three Judge Court , filed. (mm)
8/13/03	6		DEMAND for jury trial by Gonzalo Barrientos, filed (mm)
8/13/03	7		ORDER set pretrial conference for 10:00 11/11/03 before Magistrate Judge Adriana Arce-Flores; This conference is to be telephonic and will be initiated by counsel f/the pltf , entered; Parties notified. (signed by Magistrate Judge Adriana Arce-Flores) (mm)
8/15/03	8		MOTION for preliminary injunction by Gonzalo Barrientos, et al., Motion Docket Date 9/4/03 [8-1] motion , filed. (mm)
8/15/03	9		MEMORANDUM by Gonzalo Barrientos, et al., in support of [8-1] motion for preliminary injunction , filed (mm)
8/15/03	10		MOTION to dismiss by Defts: State of Texas, et al., Motion Docket Date 9/4/03 [10-1] motion , filed. (mm)
8/15/03	10		MOTION to Refer Case Immediately to the Chief Judge of the U.S. Court of Appeals of the Fifth Circuit to Convene a Three-Judge Court, and Request Oral Hearing by Defts State of Texas, et al., Motion Docket Date 9/4/03 [10-1] motion , filed. (mm)
8/15/03	10		REQUEST by Defts State of Texas, et al., for Oral Hearing , filed. (mm)
8/20/03	11		NOTICE of Hearing: Motion hearing before Chief Judge George P. Kazen set for 9:00 8/27/03 for [10-1] motion to Refer Case Immediately to the Chief Judge of the U.S. Court of Appeals of the Fifth Circuit to Convene a Three-Judge Court, and Request Oral Hearing, set for 9:00 8/27/03 for [10-1] motion to dismiss, set for 9:00 8/27/03 for [8-1] motion for preliminary injunction, set for 9:00 8/27/03 for [2-1] motion for Attorney J Gerald Hebert to appear pro hac vice before Chief Judge George P. Kazen , filed. (mm) [Entry date 08/21/03]
8/20/03	12		Pltfs' Submission to the Court by Gonzalo Barrientos, et al., filed (mm) [Entry date 08/21/03]

- 8/20/03 13  MOTION for leave to file First Amended Complaint by Gonzalo Barrientos, et al., Motion Docket Date 9/9/03 [13-1] motion , filed. (mm) [Entry date 08/21/03]
- 8/22/03 14  DESIGNATION by State of Texas, Rick Perry, David Dewhurst designating as attorney in charge, filed. (mm) [Entry date 08/26/03]
- 8/25/03 15  MEMORANDUM by Gonzalo Barrientos in opposition to [10-1] Deft's motion to dismiss , filed (mm) [Edit date 08/26/03]
- 8/27/03 16  MOTION for attorney R. Ted Cruz to appear pro hac vice by State of Texas, Motion Docket Date 9/16/03 [16-1] motion , filed. (mm)
- 8/27/03 17  ORDER granting [16-1] motion for attorney R. Ted Cruz to appear pro hac vice , entered; Parties notified. (signed by Chief Judge George P. Kazen) (mm)
- 8/27/03 18  APPLICATION by Pltf Gonzalo Barrientos, et al., for Temporary Restraining Order , filed. (mm)
- 8/27/03 19  MEMORANDUM by Pltf Gonzalo Barrientos et al., in support of [18-1] Application for A Temporary Restraining Order, filed (mm)
- 8/27/03 20  ORDER Constituting Three-Judge Court, entered; District Judge George P Kazen of the Southern District of Texas, Circuit Judge Patrick E. Higginbotham of US Court of Appeals for the Fifth Circuit, and District Judge Lee H Rosenthal of the Southern District of Texas are designated as the members of the three-judge court that is to hear and resolve this matter. Parties notified. (signed by Carolyn Dineen King, Chief Judge US Court of Appeals for the Fifth Circuit) (lt)
- 8/27/03 21  Minute entry: Pending Motions held. Apps: Carlos Zaffirini, Guadalupe Castillo, Max Renea Hicks, David R. Richards, J. Gerald Hebert f/pltfs; R. Ted Cruz, Jeff M Graham, and Edward Donald Burbach f/defts; Motion hearing held. The Court will ask for the convening of a three-judge panel. Defts indicate they will be filing a response to the pltf's application for a temporary restraining order. Hearing Concluded. Ct Reporter: Leticia Verdin . (mm) [Entry date 08/28/03]
- 8/28/03 22  SUPPLEMENT to [18-1] Application For Temporary Restraining Order by Pltf Gonzalo Barrientos, et al., filed. (mm) [Edit date 08/28/03]
- 8/29/03 23  TRANSCRIPT OF PROCEEDINGS of Motion Hearing for dates of August 27, 2003 before Chief Judge George P Kazen , filed. (Court Rptr: Leticia Verdin) (mm)
- 9/2/03 24  RESPONSE by State of Texas in opposition to [22-1] supplemented Application for A Temporary Restraining Order, filed (mm) [Entry date 09/03/03]
- 9/2/03 25  MOTION for expedited consideration of motion to dismiss by Defts State of Texas, et al., Motion Docket Date 9/22/03 [25-1] motion , filed. (mm) [Entry date 09/03/03]
- 9/3/03 26  NOTICE of Hearing: Pending Motions Hearing 1:00 9/11/03 before Chief Judge George P. Kazen before Chief Judge George P. Kazen , filed. (mm)
- 9/8/03 27  SUPPLEMENTAL RESPONSE by Pltf Gonzalo Barrientos et al., in opposition to [10-1] Defendants' motion to dismiss , filed (mm) [Entry date 09/09/03]

- 9/9/03 28  MOTION for attorney Paul M. Smith to appear pro hac vice as to Pltf Barrientos, et. al., , Motion Docket Date 9/28/03 [28-1] motion , filed. (mm) [Entry date 09/10/03] [Edit date 09/10/03]
- 9/10/03 29  ORDER granting [28-1] motion for attorney Paul M. Smith to appear pro hac vice as to Pltf Barrientos, et. al., , entered; Parties notified. (signed by Chief Judge George P. Kazen) (mm)
- 9/11/03 30  ORDER granting [2-1] motion for Attorney J Gerald Hebert to appear pro hac vice , entered; Parties notified. (signed by Chief Judge George P. Kazen) (mm)
- 9/11/03 31  Minute entry: Oral Arguments Re: Pending Motions. Apps: Max Renea Hicks, C. M. Zaffirini, Sr., David R. Richards, and Paul M. Smith f/pltfs; R. Ted Cruz, Edward Donald Burbach, David C. Mattax and Cassandra Burke Robertson f/defts. Pltfs' and Defts' counsel present oral argument. Pltfs' attorney introduces exhibit list and focuses on #30 - Defense voice their objections. The Court will allow the filing of said exhibits into the record. Pltfs are allowed an opportunity for rebuttal. The Court concludes hearing and informs parties that a decision will be entered within the next few days. Ct Reporter: Johnny Sanchez . (mm) [Entry date 09/12/03]
- 9/11/03 32  Exhibit list by Pltf Gonzalo Barrientos, et al., filed (mm) [Entry date 09/12/03]
- 9/12/03 33  MEMORANDUM AND ORDER granting [10-1] Defendants' motion to dismiss claims under the Voting Rights Act. Defendants have filed a motion to dismiss, arguing that the Act does not apply to either of the challenged events. We agree. We also DIMISS claims under 42 U.S.C. 1983, insofar as Plaintiffs claim that the State's decision to consider redistricting legislation and the failure to adhere to the "2/3rd Rule" violate the First, Fourteenth and Fifteenth Amendments to the United States Constitution. We also withhold ruling on Plaintiffs' motion to file a first amended complaint. The purpose of the amendment is to add a Count V, complaining of threats to arrest the Plaintiffs and also to require that they pay a monetary sanction for their failure to appear at earlier special sessions. As discussed at the hearing on September 11, 2003, the arrest issue likely will become moot. Indeed, the Plaintiffs' fear of being coerced to apper at a legislative session is shifting to a fear of being prevented from appearing. For reasons discussed at the hearing, neither the facts nor the law on the issue of threatened monetary sanctions are sufficiently developed at this point to permit an informed decision. Moreover, it is possible that future developments could also moot this issue., entered. Parties notified. (Issued by U. S. Circuit Judge Patrick E. Higginbotham, Chief U. S. District Judge George P. Kazen, and U. S. District Judge Lee H. Rosenthal) (mm) [Edit date 09/12/03]
- 9/22/03 34  NOTICE OF APPEAL to Supreme Court, filed by Gonzalo Barrientos, Rodney Ellis, Mario Gallegos Jr, Juan "Chuy" Hinojosa, Eddie Lucio Jr, Frank L Madla, Eliot Shapleigh, Leticia Van De Putte, Royce West, John Whitmire, Judith Zaffirini. (mm) [Entry date 09/30/03]
- 9/25/03 35  TRANSCRIPT OF PROCEEDINGS of TRO Hearing for dates of 9/11/03 before three panel Circuit Judge Patrick E Higginbotham, Chief District Judge George P Kazen, and District Judge Lee H Rosenthal , filed. (Court Rptr: Johnny C Sanchez) (mm)

10/8/03	--		Notice of appeal and Copy of docket transmitted to US Supreme Court. (mm)
10/27/03	36		NOTICE of Designation of Lead Counsel by Defendants State of Texas, et al., filed. Notice that Andy Taylor, Andy Taylor & Associates, P.C., 405 Main Street, Ste 200, Houston, TX 77002, telephone (713) 222-1817, facsimile (713) 222-1855, will serve as lead counsel for Defendants. (mm)
11/4/03	37		MEMORANDUM AND ORDER: Pltfs have filed a notice of appeal to the United States Supreme Court from the Memorandum and Order of September 12, 2003 (Docket No. 34). In that Memorandum, this Court specifically withheld a ruling on Pltfs' motion to file a first amended complaint, indicating that further factual and legal development was necessary. Accordingly, we did not enter a separate order of dismissal at that time, as contemplated by Rules 54(a) and 58(a), Fed. R. Civ. P. Subsequent events appear to have mooted any further action in this case, and the Court now proposes to enter a separate order closing it. Any comment on this proposal should be submitted no later than November 24, 2003 , entered. Parties notified. (Done by U.S. Circuit Judge Patrick E. Higginbotham, Chief U.S. District Judge George P Kazen, and U.S. District Judge Lee H. Rosenthal) (mm)
11/24/03	38		RESPONSE by Plaintiff Senators' to Court Memorandum [37-2] Order of November 4, 2003, filed. (mm) [Entry date 11/25/03]
11/28/03	39		RESPONSE by Defts: State of Texas, et al., to [38-1] Pltf Senators' November 24, 2003 Submission, filed. (mm) [Entry date 12/01/03]
12/4/03	40		An appeal in the Supreme Court of the U. S. was filed and placed on the docket Nov. 24, 2003 as No. 03-756. (mm)